

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.23-cr-00038
	)	
IRVING JHON MENDOZA-ALCANTARA,	)	
	)	
Defendant.	)	
_____	)	

**NOTICE OF SECOND AMENED ALIBI DEFENSE**

Defendant, IRVING JHON MENDOZA-ALCANTARA, through the undersigned counsel notifies pursuant to Fed.R.Crim.P. Rule 12.1, files its notice of alibi defense the charge under 8 U.S.C. § 1325 to wit:

Date: June 5, 2023

Time; 1:00PM

Defendant entered the United States with the specific intent to seek Asylum Political, asylum and humanitarian asylum in the United States. At 10:00PM the St John port, VI was closed and traveled to St. Thomas and directed himself to the airport where he waited in line for over 30 minutes to seek asylum in the United States of America.

Pursuant to 8 U.S.C. 1325 establishes “(a)Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts. Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under

title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both”.

The attached exhibits and post arrest statements establish the intent on June 3, 2023 was to meet customs and border protection officer and meet with an asylum officer. Defendant experts, Hector Vargas and Luis Rivera retired CBO and immigration inspectors.

Asylum is a protection grantable to foreign nationals already in the United States or arriving at the border who meet the international law definition of a “refugee.” The United Nations 1951 Convention and 1967 Protocol define a refugee as a person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the future “on account of race, religion, nationality, membership in a particular social group, or political opinion.” Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980. §1158.

Asylum: (a) Authority to apply for asylum, (1) In general: Any alien who is **physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)**, irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b).

Defendant is a National of Venezuela a country deemed a tyranny and notorious for violation of fundamental civil rights. The Present Biden Administration granted TPS status to all Venezuelan legally or illegal in the United States on July 31, 2023. Secretary of Homeland Security Alejandro N. Mayorkas granted “Temporary protected status provides individuals already present in the United States with protection from removal when the conditions in their home country

prevent their safe return,” said **Secretary Alejandro Mayorkas**. “That is the situation that Venezuelans who arrived here on or before July 31 of this year find themselves in. We are accordingly granting them the protection that the law provides. However, it is critical that Venezuelans understand that those who have arrived here after July 31, 2023 are not eligible for such protection, and instead will be removed when they are found to not have a legal basis to stay.” On September 20, 2023 Homeland Security Secretary Alejandro Mayorka announcement extension of immigration status to ALL Venezuelan in the United States in the United States on July 31, 2023 renders this case moot.

The appearing defendant has availed himself to the protection granted by the department of Homeland security and applied to Temporary Protected Status, and is therefore not considered an illegal alien.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail on this September 21, 2023, upon all parties of record.

Respectfully submitted,  
**PALOMARES-STARBUCK & ASSOCIATES**  
66 W. Flagler Street, Suite 601  
Miami, Florida 33130  
Telephone: (305) 537-9373  
Facsimile: (305) 501-2366  
E-Service E-mail: [palolaw2@gmail.com](mailto:palolaw2@gmail.com)

Secondary E-mail: [palolaw@gmail.com](mailto:palolaw@gmail.com)

By: /s/ Lorenzo J. Palomares Starbuck  
**Lorenzo J. Palomares-Starbuck, Esq.**  
*By appointment of the Court*